419.

SUPREME COURT OF THE UNITED STATES.

No. 135.

THE UNITED STATES, COMPLAINANTS,

vs.

THE CITY OF CHICAGO.

ON A CERTIFICATE OF DIVISION FROM THE CIRCUIT COURT U. S. FOR THE DISTRICT OF ILLINOIS.

INDEX.

	Original.	Print.
Bill of complaint - - - - - - - - -	1	2
Map *A*, referred to in bill of complaint - - - - -	11	7
Notice and service - - - - - - - -	11	7
Affidavit of Grant Goodrich - - - - - -	13	8
Map marked No. *one*, referred to in affidavit - - - -	14	8
Order of city council, marked No. two - - - - -	14	11
Questions on which the judges were opposed in opinion - -	14	11
Clerk's certificate - - - - - - - -	15	11

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THE UNITED STATES OF AMERICA
vs.
THE CITY OF CHICAGO.

Motion to continue injunction.

Pleas in the circuit court of the United States of America, for the district of Illinois, at the city of Springfield, in the district aforesaid, before the Hon. John McLean, one of the justices of the Supreme Court of the United States, presiding; and the Hon. Nathaniel Pope, judge of the district court of the United States, for the district of Illinois, associate judges of said circuit court, in chancery sitting, on Tuesday, the 10th day of June, of the term of June, in the year of our Lord one thousand eight hundred and forty-five, and of our independence the 69th year.

WM. POPE, *Clerk.*

An injunction having been granted by the honorable Nathaniel Pope, in vacation, on application of the United States of America, to restrain the city of Chicago from opening certain streets through, and committing waste upon, certain lands of the United States, described in said bill, and the map annexed thereto, which said bill is as follows:

To the judges of the circuit court of the United States for the district of Illinois, in chancery:

District of Illinois, ss:

The United States of America bring this their bill of complaint, against the city of Chicago, in the State of Illinois, and thereupon your orators complain and say, that on the first day of October, in the year eighteen hundred and twenty-four, as your petitioners are informed and verily believes, the Commissioner of the General Land Office of the United States, directed the whole of the southwest fractional quarter of section ten, in township thirty-nine north, range (14) fourteen, now in the Chicago land district, to be reserved for military purposes, as will more fully and at large appear by the records of the Commissioner of the General Land Office, to which, for greater certainty, your petitioner begs leave to refer; that in the year eighteen hundred and twenty-eight, Fort Dearborn, a portion of the fractional quarter section above particularly described, was occupied by troops of the United States, as one of the military posts of the United States; that it was evacuated by the troops in eighteen hundred and thirty-one, but none of the buildings were sold, and an agent of the United States was appointed to keep possession and care of said buildings. That your petitioner is informed, and verily believes, it was again occupied by troops of the United States in the year eighteen hundred and thirty-two, and continued so to be occupied until the spring of the year eighteen hundred and thirty-nine, when it was put in the possession of an agent of the United States, ap-

pointed by the Secretary of war. That, as your petitioner is informed, and verily believes, the site of said Fort Dearborn reservation, as marked out and described on the annexed map, lettered map A, which your petitioner prays may be considered a part of this petition, has never been abandoned by the United States as a military post, having been in the possession and under the charge of different agents of the United States since the year eighteen hundred and thirty-nine, until the present time, under the immediate appointment and supervision of the Secretary of War of the United States, and the bureau of topographical engineers attached to the United States army.

And your petitioner further showeth unto your honor, that the land embraced in the dotted lines on the annexed map, marked "line of reservation," is the property of the United States, and contains upon it a light house, barracks, *masters*, messrooms, offices, shops, stables, outhouses, and enclosures, the property of the United States, of the value of eleven thousand dollars; and that said land, with buildings and enclosures, with the exception of the light-house, and the building occupied by the keeper of the same, are now in the possession of Charles L. Schlater, an agent of the United States, under the appointment of the Secretary of War, and Captain John McClellan, a captain of the United States army, attached to the United States topographical engineers. That, as your petitioner is informed, and verily believes, in the month of June, in the year eighteen hundred and thirty-nine, the honorable Matthew Burchard, then Solicitor of the Treasury of the United States, and an agent appointed by the Secretary of War, sold at public sale, in the city of Chicago, a large portion of said fractional quarter section ten, hereinbefore particularly described, under an act of Congress, passed in March of the year eighteen hundred and nineteen, authorizing "the Secretary of War, under the direction of the President of the United States, to cause to be sold such military sites, belonging to the United States, as may have been found or become useless for military purposes"—to which law of the United States, a portion of which is herein above recited, your petitioner, for greater certainty, begs leave to refer.

And your petitioner further showeth, that at the time of said sale, the agent of the United States, as he is informed and verily believes, did not offer for sale, but expressly reserved from said sale, all of that portion of the site of Fort Dearborn reservation, that is marked out and particularly described on the annexed map, by the dotted lines lettered "line of reservation," being that portion occupied by the buildings and enclosures of the United States, for the use of the United States.

And your petitioner further sheweth, that the portion of land reserved at the time of the sale, has since that time, and is now, occupied and used by the officers and agents of the United States, under the direction of the Secretary of War, and Colonel J. J. Abert, of the United States army, the chief officer of the United States topographical bureau.

And your petitioner further sheweth unto your honor, that the city of Chicago, by an order of its common council, passed on the eleventh

day of April, eighteen hundred and forty-five, directed the street commissioner, an officer of the said city, to open a certain street, marked on the annexed map as "Michigan avenue," through a portion of the said reserved premises, and to remove the obstructions; which obstructions, as will be seen by reference to the annexed map, are the enclosures and buildings of the United States, which order, if carried into effect, would destroy property of the United States of the value of two thousand dollars.

And your petitioner also showeth unto your honor, that the city of Chicago also claim the right so to do, and threaten to open other streets through said property of the United States, as marked out in red lines on the annexed map as "proposed streets," thereby claiming the right so to do, and threatening to destroy the property of the United States of the value of three thousand dollars.

And your petitioner further showeth unto your honor, that, on the fifteenth day of April, in the year eighteen hundred and forty-five, the street commissioner of the city of Chicago, in pursuance of the above recited order of the common council of said city, with a large body of agents and laborers, did proceed to pull down a portion of one of the enclosures of the United States, on and about the said reserved property of the United States.

And your petitioner further showeth unto your honor, that by an act of the Legislature of the State of Illinois, entitled "An act to incorporate the city of Chicago," in force the fourth day of March, eighteen hundred and thirty-seven, that portion of the said fractional quarter section above herein particularly described, occupied as a military post, is expressly excepted and excluded from the limits of the incorporation, "until it shall become private property;" to which act, for greater certainty, your petitioner begs leave to refer your honor.

And your petitioner charges, that neither the city of Chicago, nor any other person or persons, have right to enter upon the said reserved premises, or any part thereof, to remove or destroy any of the buildings, enclosures, or property thereon situated, belonging to the United States, or to use any portion of said property reserved from the sale of eighteen hundred and thirty-nine, for streets or for any other purpose whatsoever, except for the use of the United States, its officers and agents.

And your petitioner further showeth unto your honor, that the agent of the United States, and a large body of laborers in the employ of the United States, are occupying the buildings, offices, quarters, stables, shops, and out-houses on said property of the United States, sought to be destroyed by the city of Chicago, in opening streets, as hereinabove set forth; that the agent and laborers aforesaid, are employed under the direction and supervision of the Secretary of War, and the bureau of the United States topographical engineers, in constructing and improving the harbor at the mouth of the Chicago river, and that great harm and detriment will be done to the public service, officers, and agents of the United States, should the expressed intentions, orders, and threats of the said city of Chicago be carried into execution. To the end there-

fore, that the said defendant may, if it can, show why your orator should not have the relief hereby prayed, and may, upon its corporal oath, and according to the best and utmost of its knowledge, remembrance, information, and belief, full, true, and perfect answer make, to such of the several interrogatories hereinafter numbered and set forth, as by the note hereinunder written, it is required to answer, that is to say:

1. Whether, and was not the whole of the southwest fractional quarter of section ten, in township thirty-nine north, range fourteen, now in the county of Cook, and State of Illinois, reserved for military purposes, in the year eighteen hundred and twenty-four, by the Commissioner of the General Land Office of the United States of America, as is hereinbefore particularly set forth?

2. Whether, and was not Fort Dearborn a portion of said fractional quarter section above described, occupied by troops of the United States in the year eighteen hundred and twenty eight, as one of the military posts of the United States, as is herein before particularly described?

3. Whether, and has not Fort Dearborn been in possession of the United States, and occupied as a military post of the United States, since the year eighteen hundred and twenty-eight, until the present time; and is it not now in the possession and occupation of the agents and officers of the United States, under the direction of the Secretary of War of the United States, and the topographical bureau of the United States?

4. Whether, and does not the property embraced within the dotted lines on the annexed map, lettered "map A," belong to the United States; and does it not contain upon it a light-house, barracks, block-house, quarters, mess-rooms, offices, shops, stables, out-houses, and inclosures of the United States, of the value of eleven thousand dollars and more; and is not this land, and are not those buildings, in the possession, occupation, and use of the agents and officers of the United States?

5. Whether, and was not a large portion of fractional quarter section ten, above herein particularly described, sold at public sale, in the year eighteen hundred and thirty-nine; and was not the land embraced within the dotted lines on the annexed map, expressly reserved by the United States, and her agents, from said sale; and was not that the general understanding and knowledge of the citizens of Chicago?

6. Whether, and was not so much of said fractional quarter section ten, as herein before particularly described, as was reserved for military purposes, or as a military post expressly, and explicitly excepted and excluded from the limits of the corporation of said city, by the act of incorporation of said city, "until the same should become private property?"

7. Whether, and did not the defendant, by her common council, pass an order on the eleventh day of April, eighteen hundred and forty-five, directing the street commissioner, an officer of the defendant, to remove obstructions from Michigan avenue, and open said street, meaning thereby to open Michigan avenue through a portion of the reserva-

tion of eighteen hundred and thirty-nine, as designated on the annexed map, as "proposed street," in continuation of Michigan avenue, and in so doing waste, injure, and destroy the property of your orators, to the amount of two thousand dollars; and if said order were carried into effect, would it not injure the complainant's property to that amount?

8. Whether, and has not the defendant claimed the right so to do, and threatened to open other streets through the property of the complainants, as hereinbefore set forth, and as marked on the annexed map in red lines as "proposed streets;" and would not the property of the complainants be wasted, injured, and destroyed, to the amount of three thousand dollars, as is in the bill alleged?

9. Whether, and are not the lands and buildings thereon situated, embraced within the dotted lines on said map, annexed to this bill, in the occupation, use, and possession of the officers of, and a large number of workmen employed by the United States, who are engaged in improving the harbor at Chicago, under the direction and supervision of the Secretary of War; and would not the interests of the United States, the interests of the public service, and the interests of the City of Chicago, the defendant, be impaired by opening the proposed streets, marked with red lines on said annexed map?

10. Whether, and did not the street commissioner of the city of Chicago, an officer of the defendant, proceed, with a large force, to pull down one of the enclosures of the complainant, in pursuance of an order of the common council of the defendant; and that the said defendant may be restrained and enjoined by this honorable court, from entering upon the said land of the United States, for the purpose of opening "Michigan avenue," or the other "proposed streets," marked upon said map annexed to this bill, through or upon the said land, and from wasting, pulling down, or intermeddling with the enclosures or buildings thereon situated; and that your orators may have such further or other relief in the premises, as the nature of the case may require, and as to your honors shall seem meet; may it please your honors to grant unto your orators a writ of injunction, issuing out of, and under the seal of, this honorable court, to be directed to the said City of Chicago, its officers, agents, servants, counsellors, and solicitors, to restrain them, and each and every of them, from entering upon the unsold and reserved portion of the southwest fractional quarter of section ten, (10,) in township thirty-nine north, range fourteen, (14,) lying in the county of Cook, and State of Illinois, and embraced within the dotted lines on the annexed map, marked "line of reservation," for the purpose of opening "Michigan avenue," or the other proposed streets, or from committing any waste or spoil upon said land, buildings, or enclosures; and also to grant unto your orators a writ of subpœna, to be issued out of, and under the seal of this court, to be directed to the City of Chicago, commanding it, at a certain day, to be and appear, by its attorneys or proper officers, before your honors, in this honorable court, and then and there to answer all and singular the premises aforesaid, and to stand

to, perform, and abide by such order, direction, and decision therein, as to your honors shall seem meet.

And your orators shall ever pray, &c.

D. L. GREGG, *U. S. Att'y.*

The defendant, the City of Chicago, is required to answer the interrogatories numbered respectively 1, 2, 3, 4, 5, 6, 7, 8, 9, and 10.

United States, district of Illinois, ss:

Charles L. Schlater, the agent of the United States, in charge of the United States property and buildings at Chicago, and superintendent of the Chicago harbor, being duly sworn, says, that the facts, matters, and things stated and set forth in the above petition or bill of complaint, are true, as far as stated on his own knowledge, and as far as stated, as he is informed and verily believes, are true to the best of his knowledge and belief.

CHARLES L. SCHLATTER,
U. States Agent Supt. Harbor of Chicago.

Subscribed and sworn to, this nineteenth day of April, A. D. 1845, and in the year of our independence the sixty-eighth, before me—

RICH'D J. HAMILTON,
Com'r Cir. Ct. U. S. for the dist. of Illinois.

[For map, see original.]

United States, district of Illinois:

Please to take notice, that on the sixth day of May, A. D. eighteen hundred and forty-five, the United States will apply to the honorable Nathaniel Pope, judge of the district court of the United States, for the district of Illinois, at his chambers in Kaskaskia, for a writ of injunction to forbid and restrain the City of Chicago, its officers, agents, counsellors, and solicitors, from committing waste upon, or otherwise injuring the property, buildings, &c., of the United States, situated upon the land of the United States, at the city of Chicago.

Yours, &c. DAVID L. GREGG,
United States Attorney.

Chicago, April 19, 1845.

United States, district of Illinois, ss:

Walter Wright, deputy marshal, in and for said district of Illinois, being duly sworn, says, that on the nineteenth day of April, A. D. eighteen hundred and forty-five, he served the above written notice on Augustus Garrett, mayor of the city of Chicago, and on Henry B. Clarke, attorney, and Edward A. Rucker, clerk of said city of Chicago, by delivering to each of them, in person, a true copy of the above written notice. WALTER WRIGHT,
Deputy marshal.

Subscribed and sworn to, this nineteenth day of April, A. D. 1845, before me—

RICH'D J. HAMILTON,
Com'r of the U. S. Cir. Ct. for the dist. of Illinois.

The City of Chicago resisted said motion to continue the injunction, upon the following affidavit, order of the council, and plat of Fort Dearborn addition to the city of Chicago, admitted to be a true copy of the map laid out and recorded by the Hon. Matthew Burchard, at the time of the date of said reservation, mentioned in said bill.

United States, district of Illinois, ss:

CITY OF CHICAGO ads. U. STATES. } In chancery.

Grant Goodrich, counsel for the City of Chicago in this cause, being duly sworn, doth depose and say, that at the time mentioned in said bill of complaint, said Matthew Burchard came to the city of Chicago, as the agent of the United States, under the direction of the Secretary of War, as he represented, and as has ever since been understood; that he surveyed and laid out the land mentioned *mentioned* in said bill, into blocks and lots, and called the same "Fort Dearborn addition to Chicago;" that he caused a plat of the same to be made, acknowledged the same, and procured it to be recorded in the office of the recorder of Cook county, a certified copy of which is herewith filed and referred to for particulars, marked No. *one;* and that the lots sold by said agent were sold by said map, and as thereon described, and sold by numbers, and not by metes and bounds; and that for such lots, so sold, the President has issued patents to the purchasers.

And this affiant further says, that he is informed and believes, that said city has never ordered, or threatened to order, any streets opened through said addition, but such as were laid out by said Burchard, and marked on said map as such; and this affiant herewith files a copy of the order complained of, which, this affiant is informed, is the only one passed by said city council in relation to the streets of that part of said addition reserved from sale, marked No. 2.

And this affiant further saith, that at the time said street, called "Michigan avenue," was laid out by said Burchard, and said map filed, said street was not enclosed with a fence, but has since been enclosed by the agents of the Government, and used by them as and for private gardens, and not for purposes of the Government, as he is informed and verily believes, and which is the enclosure mentioned in said complainants' bill.

GRANT GOODRICH.

Subscribed and sworn to, in open court, this 7th day of June, A. D. 1845.

WM. POPE,
Clerk Cir. Ct. U. S. dist. Illinois.

[For map ONE, see original.]

Description of map.

Fort Dearborn addition to Chicago, as represented on the adjacent plat, is laid out into blocks, lots, and streets upon, and embraces the whole of the southwest fractional quarter of section ten, (10,) township thirty-nine, (39,) north, range No. fourteen, (14,) east of the 3d principal meridian.

The largest figures on said plat, indicate the number of the blocks. The next smallest figures, near the centre of the lots, shew the number of the lots respectively in each block. The next size of figures, still smaller, in the interior side of the boundary of the several streets, and on the division lines of the lots, represent the measurement of the respective lots in feet and inches.

The figures written transversly, and in the streets and alleys, shew the width of the same in feet, at different points; and the figures on the exterior lines of the blocks, represent the measurement of the blocks upon which they stand.

From the west boundary of the said fraction of section (10) is laid off and appropriated, 60 feet in width, as an addition to State street; and from the south boundary of said section, 40 feet as an addition to Madison street.

The width of the rear of the water lots, bounded upon the Chicago river, to determine and established by posts set at the intersection of the lines of the lots and streets, width meanders of the ——— river, as shewn by the notes thereof, entered upon the meandering lines. The lines between the lots in block (12), are run at right angles to the N. W. line of River street.

The public grounds between Randolph and Madison streets, and fronting on Lake Michigan, is not to be occupied with buildings of any description.

At the S. E. corner of block 113, at the angle of Wabash and Washington streets, is set a lime stone, 4 by 6 inches, and 2 feet long, at least 18 inches below the natural surface of ground. Also another stone, of similar description, is set at the angle formed by the junction of River with South Water street in block (3). And also one other stone, of like dimensions, at the N. E. corner of block (17), at the angle of South Water street and Michigan avenue.

At the corner of sections 9, 10, 15, 16, is a stone near the centre of State street, which was set by the commissioners of the Illinois and Michigan canal in 1836.

The bearing of South Water, Lake, Randolph, and Washington is N. 82° E. The bearing or course of Madison street is N. 82° E. The course of River street, from South Water street to Harbor street, is N. 29° E.; thence to Lake Michigan, N. 83° E. Course of State and Wabash

streets, and Michigan avenue, is N. 85° W. All bearings were taken without any variation of the compass.

For J. R. POINSETT,
Secretary of War.
M. BIRCHARD,
Agent and Attorney.

I hereby certify, that Fort Dearborn, addition to Chicago, is laid out from the southwest fractional quarter of section (10), township (39), range No. (14), east of the 3d principal meridian; and that the adjacent plat is a true delineation of the survey thereof; and also that the foregoing field notes of the same are correct, as done by me, immediately preceding the date thereof.

ASA F. BRADLEY,
County and City Surveyor.

Dated at Chicago, June 6th, 1839.

State of Illinois, Cook county, ss:

Be it remembered, that on this seventh day of June, in the year of our Lord one thousand eight hundred and thirty-nine, before me, Henry Brown, a justice of the peace, in and for said county, came Mathew Birchard, Solicitor of the General Land Office, and agent of the War Department of the United States, to me personally known, and exhibited a power of attorney, from the Secretary of the Department of War of the United States, executed officially by said Secretary, under the seal of said Department, by direction of the President of the United States, authorizing him, the said Mathew Birchard, to cause to be surveyed and platted, duly acknowledged and recorded, as an addition to the town of Chicago, Illinois, the southwest fractional quarter of section ten, heretofore reserved for military purposes, and the site of Fort Dearborn, and the same to sell, &c., and acknowledged the foregoing map to be the map and plat of the Fort Dearborn addition to the town of Chicago, and that the United States of America are the sole proprietors and the owners of the same. HENRY BROWN,
Justice of the Peace.

Recorded June 7th, A. D. 1839.
RICH'D J. HAMILTON, *Recorder.*
Filed 7th June, A. D. 1839.

Circuit court of the United States, district of Illinois:

It is agreed and stipulated by the attorneys, in the case of the United States vs. The City of Chicago, that the above is a true copy of the recorded plat of "Fort Dearborn addition to Chicago," as laid out and recorded by Mathew Birchard, and may be taken as the one introduced by said defendant in evidence, on the motion of said plaintiff, before said court, to continue the injunction theretofore issued by the judge of said district. GRANT GOODRICH,
Sol'r and of Counsel for the City of Chicago.
DAVID L. GREGG,
United States Attorney for the dist. of Illinois.

"FRIDAY EVENING, *April* 11, 1845.

"Ald. Ogden, from committee on judiciary, reported in favor of the petition of E. Bowen and others, for the removal of obstructions at the north end of Michigan avenue. Received and laid on the table; and,

"On motion of Ald. Scammon, it was

"*Ordered*, That the street commissioner be directed forthwith to open the street, (Michigan avenue,) and remove the obstructions therefrom; and that the city attorney be directed to prosecute all persons offering any resistance to the street commissioner, whilst opening said street."

State of Illinois, city of Chicago, sct:

I, Edward A. Rucker, clerk of the city of Chicago, do hereby certify, that the foregoing is truly copied from the record of the proceedings of the common council, in my office, and kept by me, and that I am entrusted with the safe-keeping and custody of the records and files of said city.

Given under my hand and the corporate seal of said city, this
[L. S.] 27th day of May, A. D. 1845.

E. A. RUCKER, *Clerk.*

And the motion having been argued before the court, by the counsel of the respective parties, the opinions of the judges were opposed upon the following points:

1. Whether the corporate powers of the city of Chicago, have a right to open the streets through that part of the ground laid out in lots and streets, but not sold by the Government.

2d. Whether the corporate powers of the city are not limited to that part of the plat which, by sale of the Government, has become private property.

3d. Whether the streets laid out and dedicated to public use by Burchard, (were not) by his surveying the land into lots and streets, making and recording a map or plat thereof, did not convey the legal estate in the streets to the city of Chicago, and thereby made the ground embraced by said streets, "private property," so as to authorize said city of Chicago to keep said streets open.

And, on application of the said complainants, by their solicitors, the above points were ordered to be certified to the Supreme Court, agreeably to the acts of Congress, to be finally decided.

I, William Pope, clerk of the circuit court of the United States of America, for the district of Illinois, do certify the foregoing to be true and correct copies of amended bill and map, affidavit, order of council, and map of the whole reservation, and points, as the same appear on file and of record in said court.

In testimony whereof, I have hereunto affixed the seal of said
[L. S.] court, and subscribed my name, this 9th day of October, A. D. 1845, and of our independence the 70th year.

WM. POPE, *Clerk.*

Filed 4th Dec'r, 1845.